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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,851	08/13/2001	William James Harrison	ACS-55967 (27001)	8276

24201 7590 03/23/2004

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

12

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

08

Office Action Summary

Application N .

09/928,851

Applicant(s)

HARRISON ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004 and 02 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,12-20,22-31 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) 5,7,15,18,27,33 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8-10,12-14,16,17,19,20,22-26,28-31,34,35 and 37-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Claims 5, 7, 15, 18, 27, 33 and 36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

Claims 10, 12-14, 16, 17, 19, 38 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 10, the limitation in lines 7-8 is confusing and inaccurate. The V struts which join together to define cells that are V shaped are part of a single ring 12 rather than two adjacent rings 12, 12 as claimed.

Claims 1-4, 6, 9, 10, 12-14, 16, 19, 20, 22-26, 28-31, 34, 35 and 37-40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hansen et al. (5,928,280). Hansen et al., as shown in appendix A attached to the Office Action mailed Oct. 9, 2003, show a plurality of rings wherein each ring includes a plurality of triangular cells, each cell including two V struts of different amplitudes (one V strut colored solid red while the other colored solid yellow) and a connecting element (colored striped red). Although the V strut colored solid red is not a

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perfect V, the V struts of applicant's invention are not perfect V's either, since they include a curvature along the legs of the V as well as a rounded apex which are absent from a perfect V. Thus, the term "V strut" used in this application is considered to mean a shape similar to a V. The strut colored solid red is clearly very similar to a V. The cells 2 of Hansen et al. are "triangular" as claimed even though they are not perfect triangles. The cells of applicant's invention are not perfect triangles either, since they include more than three sides and curvature along the sides which are absent from a perfect triangle. Thus, the term "triangular" used in this application is considered to mean a shape similar to a triangle. The cells 2 of Hansen et al. are very clearly shaped similar to triangles. Alternatively, it would have been obvious that the Hansen et al. struts are V struts and the cells are triangular for these reasons. As to claim 1, as broadly claimed, the two joined V struts Hansen et al. form ends of the cell with one end at the top of the cell (as viewed in figure 1) and one end at the bottom of the cell. Connecting element 7 joins the rings by connecting the end of the cell of one ring (at the bottom of the cell, for example) to the end of the cell of an adjacent ring (at the top of the cell). As to claim 16, connecting elements 7 extend through (between) the joined small angle vertices. As to

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claims 20, 28 and 31, Hansen et al., in the embodiment described in col. 7, lines 13-16, disclose that the connecting elements that join adjacent rings are also located at the small angle vertices. In this embodiment, each cell is divided into two halves by a connecting element extending between apexes 4 and 6. As to claims 2, 25, 29, 34 and 35, the Hansen et al. ends of the V struts coincide at enlarged areas since the end portions of the struts colored red have a enlarged width which inherently reduces stress concentrations. As to claims 3, 4, 14 and 19, the rounded point (col. 7, lines 10-11) of the Hansen et al. strut is curved and has a radius.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. (5,928,280) in view of Cox (6,171,334). Hansen et al. fail to disclose connecting elements out of phase. However, Cox teaches that connecting elements 52 may be out of phase which results in the apparent advantage of providing increased flexibility of the stent. It would have been obvious to make the Hansen et al. connecting elements out of phase so that it too would have this advantage. With this modification, the connecting elements would be separated by at least two cells as defined in claim 17, noting the spacing of connecting elements 52 of Cox.

Applicant's arguments filed Jan. 12, 2004 have been fully considered but they are not persuasive for the reasons set forth above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone number for the

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organization where this application or proceeding is assigned is
(703)872-9306.

Any inquiry of a general nature or relating to the status
of this application or proceeding should be directed to the
receptionist whose telephone number is (703)308-0858.

mht
3/19/04



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731